IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 474 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAMANBHAI SOMABHAI PATEL THRO'P.O.A. DAHYABHAI S PATEL - Applicant(s)

Versus

PUNJAB NATIONAL BANK & 1 - Opponent(s)

==========

Appearance :
MR AJ PATEL for Applicant(s) : 1,
MR SS PANESAR for Opponent(s) : 1,
UNSERVED-EXPIRED (R) for Opponent(s) : 2,
==========

CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 18/11/2005

ORAL JUDGMENT

1.By filing instant petition under Section 115 of the Code of Civil Procedure, the petitioner – original Judgement Debtor who was the guarantor on behalf of

principal borrower, seeks to challenge the order dated 3.3.1998 recorded below application Exh.38 in Civil Misc. Application no. 40 of 1995 (Execution Petition), by the learned Civil Judge (JD), Borsad, by which the application Exh.38 filed by the petitioner praying to discharge him from the liability of the payment in connection with the decree passed in Regular Civil Suit no. 287 of 1979 by the learned Civil Judge (JD), Borsad, has been rejected.

2. At the time of hearing of this petition Mr. S.S.Panesar, learned advocate for respondent no.1-Punjab National Bank, Petlad Branch, Petlad-the original Judgement Creditor, upon written instructions dated 20.9.2005 received from respondent no.1 – Bank together with the written instructions issued by Senior Manager to the Branch Manager, Petlad Branch, states that the petitioner – guarantor has paid Rs.60,000/- towards the principal amount as well as Rs.15,000/- by way of interest in full and final settlement of the decree qua his liability. He, further states that the Bank has therefore decided to discharge the petitioner – principal Debtor – guarantor qua his liability reserving liberty to pursue the remedy against the other judgement Debtors, including the principal borrowers. He, therefore, urged to pass appropriate orders.

3. Mr. A.J.Patel, learned advocate of the petitioner states that since the Bank has taken the decision to discharge the petitioner qua his liability from enforcement of the decree passed against him in Regular Civil Suit No. 287 of 1979, this revision application may be allowed by granting the application Exh.38 and

thereby discharging the petitioner qua his liability from execution of the decree.

4. This Court has considered the submissions advanced by the learned advocates appearing for the parties and also considered the statement made by Mr. S.S.Panesar, learned advocate for respondent no.1-Bank upon written instructions received from him from the Bank and also perused the written instructions dated 20.9.2005 sent by respondent no.1-Bank to him as well as written instructions sent by Senior Manager, Ahmedabad Zonal Office addressed to Branch Manager, Petlad Branch.

5. It may be noted that respondent no.1-Bank has filed Regular Civil Suit No. 287 of 1979 in the Court of learned Civil Judge (JD), Borsad, against the principal borrower as well as against the guarantor which came to be decreed in terms of the prayer made in the suit. Respondent no.1-Bank after getting the decree in its favour instituted Execution Application no. 40 of 1995 in the Court of learned Civil Judge (JD), Borsad. During the course of hearing, the petitioner has filed application Exh.38, seeking discharge qua his liability as he has already paid Rs.60,000/-.

6. During the course of hearing of this petition, this Court has suggested that the petitioner may pay Rs.15000/- to the respondent no.1-Bank so that he can be discharged qua his liability. Respondent no.1 – Bank has accepted the suggestion fell from the Court and in compliance of the suggestion made by this Court, petitioner has already paid Rs.15,000/- to respondent no.1-Bank and the Bank has also accepted the said amount and therefore respondent no.1-Bank has taken the decision to discharge the petitioner qua his liability.

The said decision has been taken by the Zonal office, Gujarat which has been conveyed to the Manager, Petlad branch and in turn the Manager, Petlad Branch has conveyed the same by written instructions to Mr. S.S.Panesar, learned advocate for respondent no.1-Bank.

7. In aforesaid view of the matter, now, there is no liability of the Petitioner to the Bank in connection with the decree passed in Regular Civil Suit no. 287 of 1979 as he has already paid Rs.60,000/- plus Rs.15000/-. Therefore, application Exh.38 deserves to be allowed by allowing this petition.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order dated 3.3.1998 recorded below application Exh.38 in Civil Misc. Application no. 40 of 1995 (Execution Petition) is hereby quashed and set aside, result of which is that application exh.38 is allowed and the petitioner is discharged from the liability of payment in connection with the decree passed in Regular Civil Suit no. 287 of 1979 qua his liability.

9. It is clarified that it would be open for respondent no.1-Bank to recover the remaining decretal amount from the other judgement debtors, including the principal borrower by prosecuting Civil Misc. Application no. 40 of 1995 against the other judgement Debtors, including the principal borrower, which is still pending on the file of the learned Civil Judge (JD), Borsad. It is expected of the learned Civil Judge (JD), Borsad that he shall now give top priority to the hearing of Civil Misc. Application no. 40 of 1995 and shall dispose it of as early as possible preferably on or before 30.4.2006.

10.The communication dated 20.9.2005 sent by respondent no.1-Bank to Mr. S.S.Panesar, learned advocate for respondent no.1-Bank together with the letter dated 15.9.2005 sent by Senior Manager, Zonal Office, Gujarat, addressed to the Manager, Petlad Branch shall be retained on record of the case.

Rule is made absolute to the aforesaid extent.

(A.M.Kapadia,J)

Jayanti*